Dr Jasvinder Kaur a/p Kundu Singh v Majlis Perubatan Malaysia

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO 25–346–12 OF 2015
HANIPAH FARIKULLAH J
6 FEBRUARY 2017

Civil Procedure — Judicial review — Application for — Whether applicant suffered mental illness — Whether applicant's housmanship recognised — Whether necessary for applicant to restart housemanship — Whether applicant could apply for registration under the Medical Act 1971 — Whether court considered all relevant consideration

This was an application for judicial review to quash the decision of the respondent and seeking an order of mandamus for full registration under the Medical Act 1971 ('the Act'). The respondent was a corporate body incorporated under s 3 of the Act and was obliged to perform its statutory duties as provided under the act. The applicant was a graduate from University Barkatullah Vish Wavidlaya and was registered vide temporary registration certificate No 27636 dated 19 September 2002. The applicant started her housemanship on 27 January 2003 and completed it on 31 March 2004. Subsequently, she continued her services as a medical officer on 20 April 2004. She was transferred to the Hematology Department for three months from 22 August–15 November 2005. She then served in the Director's Office until she converted to the Jabatan Kesihatan Melaka from 1 November 2006. Three years after the applicant had completed her housemanship, the applicant continued to serve until her services was terminated on 15 January 2012. On 23 April 2017, a memo was sent from the Penolong Pegawai Tadbir, Hospital Kuala Lumpur to Dr Norliza Mohamed Zainuddin requesting her to comment on the applicant's performance. The applicant believed that the said remarks by Dr Norliza was one of the main reasons why she could not get full registration as it resulted in her housemanship not being recognised. The remark was related to the applicant's performance during her first posting of her housemanship period. The applicant had completed three postings all together. The other reason that affected her full registration was her psychiatric report which was recorded at the Kuala Lumpur Hospital. According to the applicant she suffered from 'thyroiditis' but was recorded with other disease which symptoms showed that it had similarities with 'schizophrenia'. The applicant contended she was wrongly diagnosed and was not suffering from mental illness which was stated in the latest medical report. The respondent submitted that the applicant had failed to adhere to s 13(2) of the Act as evident from the applicant's 'Buku Perkhidmatan dan Kronologi Perkhidmatan' (based on exh

DDA2) which showed that the applicant failed to complete her housemanship due to medical leaves taken. The respondent had agreed to the recommendation of the Fitness Practice MPM Committee that the applicant was eligible to practice and had proposed for her to restart her housemanship all over again, subject to the terms of exh JK1.

Held, allowing the application:

(1) The evidence as stated in Hospital Kuala Lumpur's letter dated 20 January 2015 ('the said letter') clearly showed that the applicant had completed her housemanship. The respondent failed to consider the relevant consideration when it decided that the applicant had to redo her housemanship, namely, the said letter issued by Hospital Kuala Lumpur. The application to quash the decision of the respondent was allowed and the applicant was at liberty to apply for registration under the Act (see paras 28–29 & 33).

(2) With regards to the applicant's mental health, based on the evidence of the medical report dated 16 August 2015 issued by Jabatan Perubatan Kuala Lumpur, it was irrational for the respondent to decide that the applicant had medical issues and the respondent had failed to consider the relevant consideration (see paras 30–31).

[Bahasa Malaysia summary

Ini adalah permohonan untuk semakan kehakiman untuk membatalkan keputusan responden dan memohon untuk perintah mandamus bagi pendaftaran penuh di bawah Akta Perubatan 1971 ('Akta'). Responden adalah badan korporat yang ditubuhkan di bawah s 3 Akta dan bertanggungjawab untuk menjalankan tugas-tugas statutorinya di bawah Akta tersebut. Pemohon adalah graduan daripada University Barkatullah Vish Wavidlaya dan adalah didaftarkan melalui sijil pendaftaran No 27636 bertarikh 19 September 2002. Pemohon mula latihannya pada 27 Januari 2003 dan tamat pada 31 Mac 2004. Kemudiannya, dia meneruskan perkhidmatannya sebagai pegawai perubatan pada 20 April 2004. Dia dipindahkan ke Jabatan Hematologi untuk tiga bulan dari 22 Ogos–15 November 2005. Dia kemudiannya berkhidmat di Pejabat Pengarah sehingga ditukar ke Jabatan Kesihatan Melaka dari 1 November 2006. Tiga tahun selepas pemohon telah tamat latihannya, pemohon terus berkhidmat sehingga perkhidmatannya ditamatkan pada 15 Januari 2012. Pada 23 April 2017, memo telah dihantar daripada penolong pegawai tadbir, Hospital Kuala Lumpur kepada Dr Norliza Mohamed Zainuddin memohon dia memberi komen atas prestasi kerja pemohon. Pemohon percaya bahawa kata-kata oleh Dr Norliza adalah salah satu sebab utama mengapa dia tidak boleh mendapat pendaftaran penuh kerana ia menyebabkan latihannya tidak diterima. Kata-kata tersebut berkaitan kepada prestasi kerja pemohon semasa tugasnya yang pertama dalam latihannya. Pemohon telah menamatkan tiga tugas keseluruhannya. Sebab lain yang menjejaskan pendaftaran penuhnya

adalah laporan psikiatriknya yang mana direkodkan di Hospital Kuala Lumpur. Mengikut pemohon dia mengalami 'thyroiditis' tetapi direkodkan dengan penyakit lain yang mana tanda-tanda menunjukkan bahawa ia ada persamaan dengan 'schizophrenia'. Pemohon berhujah yang dia telah didiagnosis dengan salah dan bukan mengalami sakit mental seperti yang dinyatakan di dalam laporan perubatan yang terkini. Responden berhujah bahawa pemohon telah gagal untuk mematuhi kepada s 13(2) Akta seperti yang nyata daripada 'Buku Perkhidmatan dan Kronologi Perkhidmatan' pemohon (berdasarkan ke atas eksh DDA2) yang menunjukkan bahawa pemohon gagal untuk menamatkan latihannya akibat cuti-cuti perubatan yang diambil. Responden telah bersetuju kepada cadangan daripada Fitness Practice MPM Committee bahawa pemohon adalah layak untuk mengamal dan telah mencadangkan untuk dirinya memulakan semula latihannya sekali lagi, tertakluk kepada terma-terma eksh JK1.

Diputuskan, membenarkan permohonan:

(1) Keterangan yang dinyatakan di dalam surat Hospital Kuala Lumpur bertarikh 20 Januari 2015 ('surat tersebut') jelas menunjukkan bahawa pemohon telah menamatkan latihannya. Responden gagal untuk mempertimbangkan pertimbangan yang tidak relevan apabila ia memutuskan bahawa pemohon perlu mengulangi latihannya, iaitu, surat yang dikeluarkan oleh Hospital Kuala Lumpur. Permohonan untuk membatalkan keputusan responden adalah dibenarkan dan pemohon bebas untuk memohon pendaftaran di bawah Akta tersebut (lihat perenggan 28–29 & 33).

(2) Berkaitan sakit mental pemohon, berdasarkan keterangan daripada laporan perubatan bertarikh 16 Ogos 2015 yang dikeluarkan oleh Jabatan Perubatan Kuala Lumpur, adalah tidak masuk akal untuk responden memutuskan bahawa pemohon mempunyai isu perubatan dan responden telah gagal untuk mempertimbangkan pertimbangan yang relevan (lihat perenggan 30–31).]

Notes

For cases on application for judicial review, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5937–5949.

Legislation referred to

Medical Act 1971 ss 3, 13(2), 19(1)(a)

Ammar bin Ghalip (Bhag Sulaiman & Co) for the applicant.
Rozanahah bt Juisin (Shahrizat Rashid & Lee) for the respondent.

Hanipah Farikullah J:

INTRODUCTION

[1] The applicant filed for judicial review to quash the decision of the respondent dated 15 May 2015. The applicant also seeks an order of mandamus for the full registration.

THE PARTIES

[2] The applicant was a graduate from University Barkatullah Vish Wavidlaya and was registered vide temporary registration certificate No 27636 dated 19 September 2002.

[3] The respondent is a corporate body incorporated under s 3 of the Medical Act 1971 and is obliged to perform its statutory duties as provided under the Medical Act 1971.

THE APPLICANT'S COMPLAINTS

[4] The applicant started her housemanship on 27 January 2003 and completed it on 31 March 2004. This was recorded in applicant's service statement.

[5] Subsequent to applicant's housemanship, she then continued her services as a medical officer on 20 April 2004. She was then transferred to Hematology Department for three months from 22 August–15 November 2005. Later, she was directed to serve in the director's office until she converted to Jabatan Kesihatan Melaka from 1 November 2006.

[6] Three years after the completion of the applicant's housemanship, the applicant continued to serve until 15 January 2012 which was when her service was terminated.

[7] A memo was sent from the Penolong Pegawai Tadbir, Hospital Kuala Lumpur to Dr Norzila Mohamed Zainuddin on 23 April 2007 which was requested Dr Norzila to give comment relating her remark of applicant's performance (exh JK3).

[8] The applicant believed that the remark made by Dr Norliza was one of the main reasons why she could not get the full registration.

[9] The other main reason that the applicant believed affected her full registration is her psychiatric report which was recorded at the Kuala Lumpur

Hospital. According to the applicant, she was suffered from 'Thyroiditis' but was recorded with other disease which the symptoms showed that it had similarities with 'Schizophrenia'.

[10] The applicant's contended that she was wrongly diagnosed.

[11] The reason why the applicant insisted that she was not suffering from schizophrenia because this was stated in the latest medical report dated 17 February 2015 (see exh JK5).

REMARKS BY DR NORZILA BT MOHAMED ZAINUDDIN

[12] The respondent contended that the applicant had to start over the housemanship pursuant to the decision dated 29 September 2015. The reason being was that the housemanship was not duly completed due to remarks ('tidak diluluskan') made by Dr Norzila bt Mohamed Zainuddin which resulted the applicant's housemanship was not recognised (see exh DDA1).

[13] The remark was made relating to the applicant's performance during her housemanship period, which in this case, it was the first posting of the housemanship.

[14] The applicant had to go through three posting all together. She started her first posting at the Pediatric Department on 27 January–31 July 2003. Her second posting was at the Surgery Department on 1 August–30 November 2003 and her last posting was at the Obstetric and Gynecologist on 1 December 2003–31 March 2004. The applicant averred that these three posting were completed by the applicant (affidavit A1, exh JK1).

MEDICAL HISTORY

[15] The other main issue that was raised by the respondent was the applicant's mental health.

[16] The applicant had referred to her latest medical report that showed she was diagnosed with 'Autoimmune Hypothyroidism' which is not some kind of mental illness (see exh JK2–4).

[17] Therefore the applicant contended that she was not suffering some kind of mental illness.

THE MMC DECISION

[18] The respondent had agreed with the recommendation of Fitness to Practice MPM Committee that the applicant is eligible to practice and had proposed for her to restart her housemanship all over again, subject to the following terms and conditions (see exh JK1):

(i) Puan perlu memaklumkan kepada penyelia, ketua jabatan atau mana-mana pihak yang bersesuaian berkenaan masalah kesihatan puan dari masa ke semasa;

(ii) Puan bersetuju memberi kebenaran kepada penyelia, ketua jabatan atau mana-mana pihak yang bersesuaian bagi memantau kesihatan puan;

(iii) Puan bersetuju memberi kebenaran kepada penyelia, ketua jabatan atau mana-mana pihak yang bersesuaian melapor masalah puan kepada pihak MPM dari masa ke semasa; dan

(iv) Puan bersetuju memberi kebenaran kepada MPM untuk memaklumkan kepada penyelia, ketua jabatan atau mana-mana pihak yang bersesuaian berkenaan masalah kesihatan puan dari masa ke semasa.

DECISION

[19] The respondent submitted that at all material times it had acted under s 19(1)(a) of the Medical Act 1971 which provides restriction for any person either temporary or fully registered. In this regard, the respondent contended that at the completion of inquiry from the Medical Review Panel (which consists of not less than three medical practitioners appointed by the respondent) and upon reaching a consensus that one is not qualified to perform the professional duties by reason of mental health or physical, the Medical Review Panel may recommend to the respondent to instruct the registrar not to register the said person in the same registration record.

[20] It is not a disputed fact that on 29 September 2015 a meeting known as Mesyuarat Majlis Perubatan Malaysia Kali Ke-344 with regards to the decision of the Medical Review Panel that the applicant is qualified to practice but is suggested to restart the housemanship provided certain conditions are fulfilled by the applicant.

[21] The respondent contended that the decision was reached since the housemanship completed by the applicant at Hospital Kuala Lumpur from 27 January 2003–31 March 2004 is incomplete due to her medical leaves and some other leaves taken by her. Despite the incompleteness of the said housemanship the respondent had also received a recommendation from the Medical Panel Review based on the medical reports that the applicant is diagnosed with mental illness.

[22] The applicant contended that the respondent had erred in law in coming to the decision dated 15 September 2015.

[23] Section 13(2) of the Medical Act 1971 provides as follows:

> Section 13(2): The provisionally registered person shall, immediately upon being provisionally registered, engage in employment in a resident medical capacity to the satisfaction of the Medical Qualifying Board for a period of not less than one year in any hospital or institution in Malaysia which is approved by the said Board for the purpose of such employment; four months of such period shall be spent in a resident surgical post, four months in a resident medical post and four months in a resident obstetrical and gynecological post; at the conclusion of satisfactory service, as certified by the Medical Qualifying Board, under this paragraph, the provisionally registered person shall be entitled to a certificate issued by the Council in the prescribed form as the evidence thereof.

[24] The respondent submitted that the applicant had failed to adhere to s 13(2) of the Medical Act as evident from the 'Buku Perkhidmatan dan Kronologi Perkhidmatan' of the applicant (exh DDA2 letter dated 20 April 2005) which shows that the applicant failed to complete her housemanship due to medical leaves which had been taken by the applicant based on the following grounds:

(a) in Pediatric Department, the completion time would be 27 January–31 July 2003, the applicant's completion period was further extended from 27 May–27 June 2003. It is also submitted that due to the applicant's poor performance a further five days extension was given from 27 July 2003–31 July 2003;

(b) in Surgical Department, the applicant had completed the course in the said department from 1 August 2003–30 November 2003;

(c) in O&G Department, the applicant completed the training from 1 December 2003–31 March 2004. In this particular department, the applicant had taken an unpaid leave of 13 days commencing from 3 April 2004–15 April 2004;

(d) in Orthopedic Department, the applicant completed the training on 20 April 2004. This department had issued two absence letters to the applicant in the said department. The applicant had failed for report to duty for eight months seven days straight from 5 January–22 August 2005 and further medical leaves for 49 days which was commencing from 11–19 January 2005 and 12 July–21 August 2005; and

(e) in Hematology Department, the applicant had completed the training for three months which is from 22 August–15 November 2005.

[25] In this regard, the respondent argued that the said decision was reached because there were time gap in between the period of housemanship wherein the applicant had applied for medical leaves and failed to report for duty. The respondent pointed out that the Ministry of Health Malaysia's Circular provides that a medical practitioner who had applied for medical leave or any other leaves which includes leave without the authority's approval, the period for housemanship shall be extended.

[26] Therefore, the respondent submitted that the applicant had failed to complete her housemanship at all material times and therefore the said housemanship was not duly approved and/or acknowledged by the Pediatric Department of Hospital Kuala Lumpur.

[27] It must be stressed that the Director of Hospital Kuala Lumpur vide a letter dated 20 January 2015 (see p 15 of the core bundle) had stated inter alia the following:

> NAME : DR. JASVINDER KAUR A/P KUNDU SINGH
>
> DESIGNATION : MEDICAL OFFICER GRADE U41
>
> With reference to the above mentioned matter.
>
> 2. This is to certify that Dr Jasvinder Kaur a/p Kundu Singh had completed her housemanship in Hospital Kuala Lumpur from 27th of January 2003 until 31st March 2004.

i)	Pediatric Department	:	27th of January 2003–31st July 2003
ii)	Surgery Department	:	1st August 2003–30th November 2003
iii)	Obstetrics & Gynecology	:	1st December 2003–31st March 2004

> 3. She was posted in Orthopedic Department as a Medical Officer from 20th April 2004 and then transferred to Hematology Department for 3 months from 22nd August 2005 till 15th November 2005.
>
> 4. She also has been posted at the Director's Office from 16th November 2005 and transferred to Jabatan Kesihatan Negeri Melaka on 1st November 2006.
>
> 5. For further enquiries, please do not hesitate to contact us at 03-2615 5319. Thank you in advance for your kind assistance on this matter.

[28] Therefore the evidence clearly shows that the applicant had completed her housemanship as stated in the Hospital Kuala Lumpur's letter dated 20 January 2015. In fact during the hearing of this proceedings learned counsel for the respondent did not dispute the authenticity of the letter dated 20 January 2015.

[29] Therefore, in my view, the respondent had failed to consider the relevant consideration namely the letter dated 20 January 2015 issued by Hospital Kuala Lumpur when it decided that the applicant has to redo a housemanship.

[30] With regards to the applicant's mental health, Jabatan Perubatan Hospital Kuala Lumpur had issued a medical report dated 16 August 2015 which states that:

Sejarah (History):

Including Presenting Complaints, History of Presenting Complaints, Past Medical History, Family History, Social and Occupational, Review of System, Medical Record Review)

PATIENT HAS BEEN UNDER FOLLOW-UP FOR AUTOIMMUNE

.....

THYROIDITIS SINCE 2010

.....

ASYMPTOMATIC (NO HYPOTHYROIDISIM SYMPTOMS)

.....

NO DEPRESSIVE SYMPTOMS

.....

WELL ON FOLLOW-UP

.....

NO PALPITATION / CHEST PAIN / SHORTNESS OF BREATH

.....

Pemeriksaan Fizikal (Physical Examination):

Including general assessment, Eye, ENT, Oral Cavity, Respiratory System, Cardiovascular System, Abdomen, Genitourinary, Central Nervous System, Musculoskeletal System, Mental Health Status and others)

WEIGHT 64.5KG, BP 135/77 PR 96/MIN

.....

NO GOITRE, NO HYPERREFLEXIA GCS 15/15 DRIFTED TO TIME/PLACE/PERSON

.....

CVS SISZ NO MURMUR

.....

LUNGS CLEAR

.....

Keputusan ujian makmal dan radiology (summary of investigation) **A**

fT4 15.3 / TSH 0.06

.....

FBS 5.8

..... **B**

ALT 11

.....

HDL 1.9 / COC 3.1

..... **C**

CREATININE 62

.....

Diagnosis (Diagnosis)

AUTOIMMUNE HYPOTHYROIDISM **D**

.....

.....

.....

Rawatan (Treatment) **E**

Rumusan prosedur yang dijalankan ke atas pesakit (summary of procedures done)

REGULAR FOLLOW-UP

.....

..... **F**

.....

Preskripsi ubatan yang diberikan kepada pesakit (drugs and other medicaments prescribed)

T. L-THYROXINE 25 MCG OM **G**

.....

.....

.....

Perkembangan pesakit sepanjang di bawah penjagaan termasuk rawatan susulan (progress of patient while under the care including follow-up) **H**

WELL, NO COMPLICATION

.....

NORMAL FUNCTIONING **I**

.....

.....

Keadaan pesakit ketika berjumpa kali terakhir dengan doktor (condition of patient on last visit)

NO NEW PROBLEMS

.....

.....

.....

[31] Therefore based on the above evidence, in my view it is irrational for the respondent to decide that the applicant is having some medical issue.

CONCLUSION

[32] Based on the above reasons in my view, the respondent's decision is irrational and it has failed to consider relevant consideration.

[33] Accordingly, I allowed the applicant's application in prayer (1) to quash the decision of the respondent. Therefore the applicant would be at liberty to apply for registration under the Medical Act.

Application allowed.

Reported by Nisha Paran